

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

ORIGINAL

In the Matter of

Questions Related to Assessment  
of Presubscribed Interexchange  
Carrier Charges on Public Payphone Lines

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96-262  
CCB/CPD 98-34

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MCI REPLY COMMENTS

JUN 2 - 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

MCI Telecommunications Corporation (MCI) hereby submits its reply to comments on Questions 2-5 raised by the Common Carrier Bureau (Bureau) in the May 4, 1998 Public Notice.<sup>1</sup>

In crafting rules to govern the application of the presubscribed interexchange carrier charge (PICC) to public payphone lines, the Commission must adopt an approach that satisfies (1) the nondiscrimination provisions of the Payphone Order,<sup>2</sup> and (2) the cost causation principles of the Access Reform Order.<sup>3</sup> The only approach that satisfies

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<sup>1</sup>Public Notice, DA 98-345, May 4, 1998.

<sup>2</sup>In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Report and Order, CC Docket No. 96-128, rel. September 20, 1996 (Payphone Order).

<sup>3</sup>In the Matter of Access Charge Reform, First Report and Order, CC Docket No. 96-262, rel. May 16, 1997 (Access Reform Order).

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both of these requirements is to assess the PICC directly on all payphone service providers (PSPs), both ILEC and independent.

2) Does the Commission's existing rule governing collection of the PICC, 47 C.F.R. §69.153, permit price cap LECs to impose PICC charges for LEC public payphone lines and, if not, whether the rule should be amended to provide explicitly for assessment of PICCs on public payphone lines?

Commenters agree that the application of the PICC to public payphone lines is not addressed in the Access Reform Order.<sup>4</sup> There is disagreement, however, about whether the Access Reform Order and the Commission's rules can nonetheless be interpreted as permitting the assessment of the PICC on public payphone lines. The price cap ILECs argue that nothing in Section 69.153 of the Commission's rules specifically exempts ILEC payphone lines from assessment of the PICC.<sup>5</sup> Other commenters argue that there is no provision in Section 69.153 that specifically permits assessment of the PICC on public payphone lines.<sup>6</sup>

MCI agrees with those parties that believe that the existing Section 69.153 does not permit assessment of the PICC on public payphone lines. As discussed in MCI's initial comments, Part 69 has always treated ILEC payphone lines as a special case: ILEC PSPs are not considered "end users" and ILEC payphone lines are not considered

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<sup>4</sup>Ameritech Comments at 5; Oncor Comments at 2.

<sup>5</sup>See, e.g., Ameritech Comments at 4-5.

<sup>6</sup>See, e.g., American Public Communications Council (APCC) Comments at 17-18.

“multiline business lines.”<sup>7</sup> Consequently, without payphone-specific provisions such as those in Section 69.152,<sup>8</sup> Section 69.153 cannot be interpreted as permitting assessment of the PICC to payphone lines. For example, because an ILEC PSP is not an “end user,” Section 69.153(b) does not permit assessment of the PICC on an ILEC “smart phone” that relies on 10XXX dialing, which is a common payphone industry practice.<sup>9</sup> Even Ameritech concedes that an ILEC payphone line is not considered to be a “multiline business” line.<sup>10</sup>

MCI does not believe that the absence of payphone-specific provisions in Section 69.153 shows that the Commission has concluded that ILEC payphone lines should be exempted from the PICC. The Access Reform Order and subsequent orders contemplate the assessment of the PICC on all types of lines, with only one very limited exemption for Lifeline customers who elect toll blocking.<sup>11</sup> Moreover, as the price cap ILECs point out, if a PICC is not assessed on public payphone lines, then the costs that would otherwise be recovered through the payphone PICC would have to be recovered from other lines in the form of higher CCL or PICC rates.<sup>12</sup>

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<sup>7</sup>MCI Comments at 3-5.

<sup>8</sup>47 C.F.R. §69.152(a) (EUCL shall be assessed upon “providers of public telephones”); 47 C.F.R. §69.152(c) (EUCL charge for “subscriber line associated with a public telephone” shall be equal to the multiline business EUCL).

<sup>9</sup>See APCC Comments at 8.

<sup>10</sup>Ameritech Comments at 5.

<sup>11</sup>Bell Atlantic Comments at 2.

<sup>12</sup>See Ameritech Comments at 5-6.

The absence of payphone-specific provisions in Section 69.153 simply confirms that issues related to the assessment of the PICC on ILEC payphone lines were not considered in the access reform proceeding. In considering these issues for the first time, the Commission should find that the underlying policy goals of the Access Reform Order and the Payphone Order require that payphone lines, both independent and ILEC, be treated differently from ordinary multiline business lines. Specifically, the Commission should require the ILECs to assess the PICC directly on the ILEC or independent PSP. This the only approach that permits cost-causative recovery and also ensures that ILEC and independent PSPs are treated on a nondiscriminatory basis.

3) Assuming that price cap LECs are permitted to assess PICC charges on public payphone lines, should the PICC be: (a) charged to the presubscribed 1+ carrier; (b) charged to the presubscribed 0+ carrier; (c) imputed to the LEC's payphone unit as an end user; (d) split evenly between the 1+ and 0+ PIC; or (e) prorated among all IXCs that carry calls originating from a particular payphone each month? Commenters may also propose other alternative methods for allocating the public payphone PICC.

According to the ILECs, they are assessing the PICC on the 0+ carrier at “dumb” payphones and on the 1+ carrier at “smart” payphones.<sup>13</sup> The ILECs argue that the PICC should be assessed on the 0+ carrier at dumb payphones because the 0+ carrier is the “PIC of record” in their switches and billing systems.<sup>14</sup> The ILECs contend that the 1+ carrier at a dumb payphone is not a PIC, but is a secondary carrier subcontracted or

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<sup>13</sup>GTE Comments at 8.

<sup>14</sup>Ameritech Comments at 1-2.

permitted by the PIC of record to handle coin sent-paid traffic.<sup>15</sup> Most 0+ carriers do not have the ability to handle 1+ coin sent-paid traffic from dumb payphones themselves.

The Commission should not permit the ILECs to continue assessing the PICC on the 0+ carrier at ILEC public payphones. As discussed in MCI's initial comments, the 0+ carrier is unable to recover the PICC in a cost-causative manner because it does not have a customer-carrier relationship with the ILEC PSP or with the entity that makes the presubscription decision -- the location provider.<sup>16</sup> The 0+ carrier is thus forced to recover the PICC from individual callers through higher operator services rates or a special payphone surcharge. These higher rates create an artificial incentive for callers to use dial-around carriers, and place the 0+ carrier at such a competitive disadvantage that it may be unable to recover its PICC costs at all.

Contrary to Ameritech's claim that payphones are not uniquely susceptible to dial-around,<sup>17</sup> payphone lines differ from ordinary multiline business lines in at least two key respects. First, as AMNEX points out, dial-around is already common at payphones.<sup>18</sup> If callers were faced with a choice between a presubscribed carrier whose rates reflected the PICC and a dial-around carrier whose rates did not reflect the PICC, they would have an added incentive to choose the dial-around carrier. Second, in

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<sup>15</sup>Bell Atlantic Comments at 5-6.

<sup>16</sup>MCI Comments at 7-8. See also BellSouth Comments at 3 n. 6 ("It should, however, be noted that in the case of LEC payphones, the right of PIC selection belongs in the first instance to the location provider.")

<sup>17</sup>Ameritech Comments at 8.

<sup>18</sup>AMNEX Comments at 2.

contrast to ordinary multiline business lines, it is impossible to eliminate the financial incentive for callers to choose a dial-around carrier. As discussed in MCI's initial comments, it would not be feasible for the ILEC to directly assess a prorated portion of the PICC on individual callers electing to use a non-presubscribed carrier.<sup>19</sup>

The Commission should reject the argument that the PICC should be assessed on the 0+ carrier because "it is primarily benefiting from the common line."<sup>20</sup> The Commission has never characterized the PICC as a fee paid in exchange for the "benefit" of being the presubscribed carrier. Indeed, the Commission has recognized that the convenience of "1+" dialing (or "0+" dialing) is not reason enough for callers to choose a carrier whose rates have to recover the PICC over a carrier whose rates do not have to recover the PICC.<sup>21</sup> The Commission recognized that, in order for the presubscribed carrier to have an opportunity to recover the PICC, the PICC rules also had to remove the financial incentive to use dial-around.<sup>22</sup> Because there is no way to remove the financial incentive for transient callers at a payphone to dial around a 0+ carrier whose rates reflect the PICC, the Commission should not permit the ILECs to assess the PICC on the 0+ carrier.

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<sup>19</sup>MCI Comments at 8.

<sup>20</sup>GTE Comments at 8.

<sup>21</sup>Access Reform Order at ¶93.

<sup>22</sup>Id. at ¶92.

Some commenters suggest that the PICC should be assessed on the 1+ carrier at both dumb and smart ILEC payphones.<sup>23</sup> As these commenters note, this would be more consistent with the Access Reform Order, which contemplates that the PICC will be assessed on the 1+ carrier.<sup>24</sup> However, even the 1+ carrier at an ILEC payphone does not, in many cases, have a customer-carrier relationship with the ILEC PSP or the entity that makes the presubscription decision. At most ILEC payphones, the 1+ carrier is selected either (1) by default; (2) by the 0+ carrier; or (3) by the location provider.<sup>25</sup> In contrast, the 1+ carrier presubscribed to an independent PSP is able to recover the PICC from the entity that makes the presubscription decision -- the independent PSP.

Because neither the 0+ nor the 1+ carrier is able to recover the PICC associated with ILEC payphones in a cost-causative manner, the Commission should adopt option (c) and require the price cap ILECs to impute the payphone PICC to the ILEC payphone unit. This is the only option that permits the PICC to be recovered in a cost-causative manner, as is required by the Access Reform Order.<sup>26</sup> Furthermore, as discussed below, this is the only option that can satisfy the nondiscrimination requirements of the Payphone Order.

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<sup>23</sup>Sprint Comments at 2.

<sup>24</sup>ONCOR Comments at 5-6.

<sup>25</sup>Ameritech Comments at 1; Bell Atlantic Comments at 5.

<sup>26</sup>See MCI Comments at 6-7.

4) Should all public payphones be charged the multiline business PICC, or should some public payphones, such as those that constitute the only telephone line at a given location, be charged the single-line business PICC?

Some commenters argue that ILEC payphone lines should be assessed the single-line business PICC because many ILEC payphones are found at locations where they are the only payphone. However, as most commenters point out, it is irrelevant how many payphones are at a given location.<sup>27</sup> Section 69.152 of the Commission's rules requires ILEC payphones to be assessed the multiline business SLC, regardless of how many payphones are at a particular location.<sup>28</sup> Because the Commission generally requires the PICC and SLC to be assessed "on the same basis,"<sup>29</sup> it should require that ILEC payphone lines be assessed the multiline business PICC. No commenter has provided any policy reason for assessing the single-line business PICC on ILEC payphone lines.

5) Do policy reasons, practical considerations, or other factors suggest that price cap LECs should be permitted to assess PICCs on the LEC's public payphone lines that are different in amount, or collected from a different party, from those assessed on privately-owned payphones?

All commenters, including the ILECs, agree that the PICC should be assessed on ILEC payphone lines in the same manner as on independent PSP lines.<sup>30</sup> In practice,

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<sup>27</sup>Bell Atlantic Comments at 3-4.

<sup>28</sup>47 C.F.R. §69.152(c).

<sup>29</sup>In the Matter of Access Charge Reform, Second Order on Reconsideration and Memorandum Opinion and Order, CC Docket No. 96-262, rel. October 9, 1997, at ¶23.

<sup>30</sup>APCC Comments at 22-23; Ameritech Comments at 9-10.



however, the ILECs are treating ILEC and private payphones differently. At private payphones, the ILECs are assessing the PICC on the 1+ carrier or, if the independent PSP does not have a presubscribed carrier, on the independent PSP itself. At ILEC payphones, on the other hand, the ILECs are typically assessing the PICC on the 0+ carrier. The effect of this differential treatment is that independent PSPs pay the PICC, either directly to the ILEC or indirectly to the PSP's presubscribed carrier, while ILEC PSPs escape the PICC because they do not have a customer-carrier relationship with the 0+ carrier.<sup>31</sup> This differential treatment is clearly contrary to the Payphone Order's requirement that ILEC and independent PSPs be placed on an equal footing.

As APCC discusses in its comments, "[t]he technical differences between LEC PSPs and independent PSPs in the area of presubscription must not be allowed to have a competitive effect under the Commission's post-1996 Act deregulatory framework for payphones."<sup>32</sup> The only way to avoid the effects of differences between ILEC and independent PSPs' payphone technology and presubscription arrangements is to assess the PICC directly on all PSPs, not on the presubscribed carrier(s). Direct assessment of the PICC on all PSPs would ensure not only that the PICC assessed on ILEC payphone lines is recovered in a cost-causative manner, as discussed above, but would also ensure that the PICC is assessed on a nondiscriminatory basis.

An amended rule that provided for the direct assessment of the PICC on all PSPs would not represent a significant change for independent PSPs. As APCC discusses in

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<sup>31</sup>APCC Comments at 19.

<sup>32</sup>Id. at 23.

its comments, many independent PSPs are already being assessed the PICC directly because they use 10XXX dialing as a method of fraud control.<sup>33</sup>

Respectfully submitted,  
MCI TELECOMMUNICATIONS  
CORPORATION



Alan Buzacott  
Regulatory Analyst  
1801 Pennsylvania Ave., NW  
Washington, DC 20006  
(202) 887-3204


June 2, 1998

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<sup>33</sup>Id. at 6, 11.

### STATEMENT OF VERIFICATION

I have read the foregoing, and to the best of my knowledge, information, and belief there is good ground to support it, and that it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on June 2, 1998.

  
\_\_\_\_\_  
Alan Buzacott  
Regulatory Analyst  
1801 Pennsylvania Ave. NW  
Washington, D.C. 20006  
(202) 887-3204

## **CERTIFICATE OF SERVICE**

I, John E. Ferguson III, do hereby certify that copies of the foregoing Reply Comments were sent via first class mail, postage paid, to the following on this 2nd day of June, 1998.

Jane Jackson\*\*  
Chief, Competitive Pricing Division  
Federal Communications Commission  
1919 M Street, N.W.  
Room 518  
Washington, DC 20554

International Transcription Services  
1919 M. Street, N.W.,  
Washington, DC 20036

Albert H. Kramer  
Michael Carowitz  
Christopher T. McGowan  
Dickstein Shapiro Morin & Oshinsky  
2101 L Street, N.W.  
Washington, DC 20037-1526

Jay C. Keithley  
H. Richard Juhnke  
Sprint  
1850 M Street, N.W., 11th Floor  
Washington, DC 20036

Ann C. Bernard  
Corporate Counsel  
One Call Communications, Inc.  
801 Congressional Blvd.  
Carmel, IN 46032

Cheryl A. Tritt  
Joan E. Neal  
Morrison & Foerster  
2000 Pennsylvania Avenue, NW  
Suite 5500  
Washington, DC 20006-1888

Edward Shakin  
Bell Atlantic  
1320 North Court House Road  
Eighth Floor  
Arlington, VA 2220

Robert M. Lynch  
Durward D. Dupre  
Michael J. Zpevak  
Thomas A. Pajda  
SBC  
One Bell Plaza, Room 3003  
Dallas, TX 75202

Christopher M. Heimann  
Ameritech  
Suite 1020  
1401 H Street, NW  
Washington, DC 20005

Wendy S. Bluemling  
SNET  
227 Church Street  
New Haven, CT 06510

M. Robert Sutherland  
Richard M. Sbaratta  
Helen A. Shockey  
BellSouth  
1155 Peachtree Street, NE  
Suite 1700  
Atlanta, GA 30309-3610

James T. Hannon  
Jeffrey A. Brueggeman  
U S West  
1020 19th Street, NW  
Suite 700  
Washington, DC 20036

Guy Longobardo  
General Counsel  
AMNEX, Inc.  
100 West Lucerne Circle  
Suite 100  
Orlando, FL 32801

Mitchell F. Brecher  
Fleischman and Walsh, LLP  
1400 16th Street, NW  
Washington, DC 20036

John F. Raposa  
GTE Service Corporation  
600 Hidden Ridge, HQE03J27  
P.O. Box 152092  
Irving, TX 75015-2092

Gail L. Polivy  
GTE Service Corporation  
1850 M Street, NW  
Washington, DC 20036

Dana Frix  
Tamar E. Finn  
Kathleen L. Greenan  
Swidler & Berlin  
3000 K Street, NW  
Suite 300  
Washington, DC 20007

**\*\*HAND DELIVERED\*\***

  
John E. Ferguson III